

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMETRIUS CAUSEY,

Defendant-Appellant.

UNPUBLISHED
February 20, 2007

No. 266091
Wayne Circuit Court
LC No. 05-005948-01

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of four counts of first-degree criminal sexual conduct with a person under 13 years of age, MCL 750.520b(1)(a). Defendant was sentenced to 15 to 30 years' imprisonment on each of the four criminal sexual conduct convictions. Defendant appeals as of right. We affirm.

Defendant claims that the trial court denied defendant his right to a fair trial when it admitted evidence of defendant's prior sexual conduct which had facts too dissimilar to the charged offense to show defendant's common scheme or plan under MRE 404(b). We disagree.

This Court reviews a trial court's decision to admit evidence pursuant to MRE 404(b) for a clear abuse of discretion. *People v Johnigan*, 265 Mich App 463, 464; 696 NW2d 724 (2005). An abuse of discretion occurs where the trial court chooses an outcome falling outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Defendant argues that, despite his motion to exclude the MRE 404(b) evidence, the trial court admitted evidence of prior acts of wrongful sexual conduct he allegedly engaged in with two prior victims, girls under the age of 13. Defendant contends that the evidence was too dissimilar to show defendant's common scheme or plan, and instead it showed only defendant's criminal propensity, and thus, was inadmissible under MRE 404(b). We disagree.

Under MRE 404(b), evidence of other crimes is inadmissible to show the defendant's criminal propensity, but it is admissible for other purposes, such as proving that the defendant had a common scheme or plan. In *People v Vandervliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), the Michigan Supreme Court articulated a four-part test for admitting prior bad acts evidence under MRE 404(b): (1) the evidence must be offered for a proper purpose under MRE 404(b); (2) the evidence must be relevant under MRE 402 as enforced through MRE 104(b); (3)

the probative value of the evidence must not be substantially outweighed by unfair prejudice; and (4) the trial court may, upon request, provide a limiting instruction to the jury.

The prosecution initially bears the burden of demonstrating the relevance of the evidence to prove a fact within one of the exceptions to MRE 404(b). *People v Crawford*, 458 Mich 376, 385; 582 NW2d 785 (1998). “Relevance is a relationship between the evidence and a material fact at issue that must be demonstrated by reasonable inferences that make a material fact at issue more probable or less probable than it would be without the evidence.” *Crawford, supra*, p 387. A fact is material where it is in issue or within the range of litigated matters in controversy. *People v Ackerman*, 257 Mich App 434, 439; 669 NW2d 818 (2003). All relevant evidence is admissible, unless otherwise excepted by the state or federal constitutions or other court rules. MRE 401; MRE 402; *Vandervliet, supra*, pp 60-61.

Evidence of prior bad acts is logically relevant where the bad act and the charged offense are sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system the defendant employed in committing the charged offense. *People v Sabin (After Remand)*, 463 Mich 43, 63; 614 NW2d 888 (2000). But there need not be an impermissibly high level of similarity between the prior bad acts and the charged offense as long as the evidence is offered to show something other than the defendant’s criminal propensity. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004). For prior bad acts to establish the existence of a defendant’s common scheme or plan under MRE 404(b), the evidence need not possess distinctive or unusual features as long as it supports an inference that the defendant used a common plan in committing the charged offense. *People v Hine*, 467 Mich 242, 252-253; 650 NW2d 659 (2002).

Here, the MRE 404(b) evidence provided a sufficient factual nexus between defendant’s alleged prior incidents of criminal sexual conduct and the charged offense to support an inference that defendant used a common plan or scheme in engaging in acts of criminal sexual conduct with the current victims, two girls also under the age of 13. The MRE 404(b) evidence established that defendant was the stepbrother of the two prior victims who testified. The prior victims adored defendant and their mother trusted defendant and considered him to be a son. Defendant was living with the prior victims’ family when the alleged instances of wrongful sexual conduct occurred. Defendant exploited his status as a trusted older brother figure to gain proximity to these prior victims when they were in isolated parts of the home and vulnerable. Defendant would then try to force them to have sexual intercourse with him or perform oral sex on him. For example, defendant lured one of the prior victims into a closet while playing hide and seek with her and then tried to make her perform oral sex on him.

In the instant case, defendant had resided with the current victims, and at the time the incidents occurred, he was visiting their house daily. As in the case of the prior victims, the current victims looked up to defendant as an older brother figure. Defendant was the half-brother of one of the current victims. Defendant used his status as a revered older brother figure to garner the family’s trust. The mother of the current victims also respected defendant and depended upon him to “babysit.” On occasions where the current victims were alone in a room or playing hide and go seek with defendant, he would try to force them to perform oral sex on him or have sexual intercourse with him. At the time these events allegedly occurred, the current victims were six and eight years old.

The circumstances surrounding the incidents of criminal sexual conduct defendant allegedly engaged in with the current victims were similar to the circumstances surrounding the wrongful sexual conduct defendant allegedly engaged in with the prior victims. The prior and current victims were all girls that were under the age of 12 at the time the wrongful acts allegedly occurred. Defendant was a respected older brother figure that all the victims looked up to and admired. The victims' mothers also trusted defendant. Defendant lived with the prior victims at the time these instances of alleged wrongful conduct occurred. Defendant had also lived with the current victims, and at the time of the alleged wrongful conduct, he was visiting them on a daily basis. In each case, defendant accosted the victims when they were at home in a room alone or playing hide and go seek with him. Defendant attempted to engage in the same sexual acts with all four victims, i.e., either sexual intercourse or oral sex. The MRE 404(b) evidence was relevant as it established that defendant had a common plan or scheme of using his familial relationship with the victims to force them to have sexual intercourse with him or perform oral sex on him when they were at home and vulnerable.

Defendant also argues that the MRE 404(b) prior bad acts evidence was unfairly prejudicial. We disagree. Defendant's prior bad acts are highly probative because they supply an ample factual nexus to the charged offense to show defendant's common scheme or plan. Also, the judge gave the jury a limiting instruction cautioning it not to infer that defendant had a bad character and acted in conformity with that character. The prosecutor also explained to the jury that it could use the prior bad acts evidence to determine only that defendant had a common scheme of preying on young girls. Moreover, the prosecutor did not repeatedly refer to the MRE 404(b) evidence throughout the trial. Hence, the probative value substantially outweighed any danger of unfair prejudice.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio